

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SUZANNE DEGNEN, D.M.D., P.C.
d/b/a SUNSET TOWER FAMILY
DENTISTRY,

Plaintiff,

v.

DENTIS USA CORPORATION d/b/a
DENTIS USA,

ELLIE KIM,

and

JOHN DOES 1-10.

Defendants.

Case No. _____

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

COMES NOW Defendant Dentis USA Corporation (“**Dentis USA**”), by and through its attorneys, and hereby respectfully removes the above-captioned case from the 11th Judicial Circuit Court for Missouri in St. Charles County, Case No. 1611-CC00848, to the United States District Court for the Eastern District of Missouri, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. Dentis USA removes this case to this Court because it involves allegations under the Telephone Consumer Protection Act, 47 U.S.C. § 227. In support of removal, the Dentis USA states as follows:

BACKGROUND

1. On September 16, 2016, Plaintiff Suzanne Degnen DMD PC d/b/a Sunset Tower Family Dentistry (“Plaintiff”) filed its Class Action Junk-Fax Petition (“Petition”) in the Circuit Court of St. Charles County, Missouri, Case No. 1611-CC00848. Dentis USA’s registered agent

was served with a summons and the Petition on or about December 27, 2016. This action is therefore timely removed pursuant to 28 U.S.C. § 1446(b) because it is filed within thirty (30) days from the date that Dentis USA was served with a copy of Plaintiff's Petition. See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 356 (1999) (holding that the thirty (30) day removal period does not begin to run until defendant is formally served); Marano Enters. Of Kansas v. Z-Teca Rests., L.P., 254 F.3d 753, 756-57 (8th Cir. 2001) (same).

2. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 2.03, a complete copy of the court file from the 11th Judicial Circuit Court for Missouri in St. Charles County, including true and correct copies of Plaintiff's Petition, Summons, Return of Summons, and all other process, pleadings and orders received by Dentis USA, is attached herein as **Exhibit A**.

3. Plaintiff's Petition alleges that Dentis USA, Ellie Kim, and John Does 1-10 have sent a facsimile to Plaintiff which constituted unsolicited advertisement, in violation of the Telephone Consumer Protection Act of 1991 ("TCPA"), as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227, and the regulations promulgated thereunder.

4. Defendants John Does 1-10 are currently unknown fictitious defendants and need not consent to removal of this matter at this time. See K.L. v. State Farm Mut. Auto Ins. Co., No. 4:05CV1950 TCM, 2006 WL 51192 (E.D. Mo. 2006) (stating that defendant's consent to removal would not have been necessary if it were a "John Doe" unknown).

5. Further, Defendants Ellie Kim and John Does 1-10 are unserved and "the consent of unserved defendants need not be obtained to effectuate removal." Roberts v. Palmer, 354 F.Supp.2d 1041, 1044 (E.D. Mo. 2005).

FEDERAL QUESTION JURISDICTION

6. The action Plaintiff has filed in state court is one over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because the action asserts claims under the TCPA, which “aris[es] under” the “laws . . . of the United States.” See Mims v. Arrow Fin.Servs., LLC, 132 S. Ct. 740, 742 (2012). See also Missouri ex rel Nixon v. Progressive Business Publications, Inc., 504 F.Supp.2d 699, 701 (W.D. Mo. 2007) (holding that petition was properly removed by defendant because the district courts of the United States have exclusive jurisdiction over TCPA actions).

7. Venue is proper because the Plaintiff’s principle place of business and the St. Charles County Circuit Court, Missouri is within the United States District Court for the Eastern District of Missouri, Eastern Division. See 28 U.S.C. §§ 110, 1441(a) and 1445(a).

8. Notwithstanding this removal, Dentis USA does not waive and specifically reserves any and all objections, exceptions, or defenses to the Petition referred to herein, including but not limited to, moving to or have this matter dismissed, stayed and/or transferred to another court.

WRITTEN NOTICE OF REMOVAL

9. Dentis USA has given written notice of removal to Plaintiff contemporaneously with the filing of this Notice of Removal, filed as a separate document. A copy of the Notice to Plaintiff of Removal is attached as **Exhibit B**.

10. Upon assignment of a federal court case number, Dentis USA shall file a notice of filing notice of removal with the Clerk of the St. Charles County Circuit Court. As per the Eastern District of Missouri Removal Case Check List, within three days of the filing of this

Notice of Removal, Dentis USA shall file with this Court the notice to the state court that has been acknowledged by the St. Charles County Circuit Clerk.

ADDITIONAL PROCEDURAL REQUIREMENTS

11. Pursuant to Local Rules 2.02 and 2.03, the Original Filing Form is filed herewith.
12. Pursuant to Local Rules 2.02 and 2.03, the Civil Cover Sheet is filed herewith.

WHEREFORE, Dentis USA respectfully request this Court exercise its subject-matter jurisdiction over this action to the exclusion of other proceedings in the state court in accordance with the law and for such other and further relief as this Court deems appropriate in the premises.

Respectfully submitted,

WEISS ATTORNEYS AT LAW, P.C.

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Attorneys for Defendant Dentis USA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was placed in the U.S. Mail and via service of the ECF system, postage prepaid, this 26th day of January 2017 for service upon the following:

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